

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZHEN RAMMELSBURG

Claimant

IA DEPT OF PUBLIC HEALTH

Employer

APPEAL 21A-UI-18734-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/04/21

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On August 25, 2021, Zhen Rammelsberg, claimant, filed an appeal from the August 23, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant was discharged for disqualifying misconduct. The parties were properly notified about the hearing held by telephone on October 15, 2021. The claimant, Zhen Rammelsberg, participated and testified. Adam Krause participated as a witness for the claimant. The employer, Iowa Department of Public Health, participated through Administrative Assistant II, Shawnice Cameron. Claimant's Exhibits A and B were offered and admitted. Official notice was taken of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Covid-19 Contract Tracer beginning on September 10, 2020, and was separated from employment on April 1, 2021, when she was notified by her direct supervisor, Claudia Becker, that she was being discharged from her employment for posting identifiable confidential information about someone's Covid-19 status on her Facebook account. However, the information she posted was not work related and was in reference to someone from out of state she knew had visited a restaurant after testing positive for Covid-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32 provides, in relevant part:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14(1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all, if it is not contrary to public policy. However, if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The issue is not whether the employer made a

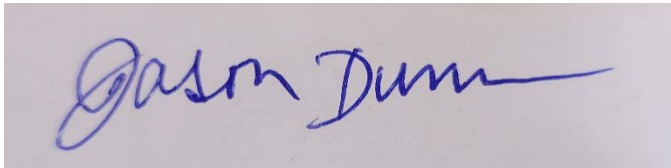
correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer failed to meet its burden in this case. Accusing an employee of breaching confidentiality is a serious allegation yet the only evidence provided by the employer was controverted hearsay from a third party, Shawnice Cameron. The employer failed to provide any direct evidence related to the allegation that the claimant breached any confidentiality protocols such as screen shots from the claimant's Facebook page or testimony from claimant's supervisor, Ms. Becker. The claimant denied the employer's accusation, testified she was not given an opportunity to defend herself, and no investigation was undertaken by the employer to determine the veracity of the allegation. The employer did not meet its burden and the claimant's discharge was not disqualifying. Benefits are allowed provided claimant is not otherwise disqualified or ineligible.

DECISION:

The August 23, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Jason Dunn
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October 22, 2021
Decision Dated and Mailed

jd/scn